IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06-07-2006

CORAM :

THE HONOURABLE MR.JUSTICE A. KULASEKARAN

W.P. No. 32250 of 2004
-o-

H.C. Lenin .. Petitioner

Versus

1. The Commissioner of Police
   Coimbatore City

2. The Additional Director General
   of Police (L & W)
   Chennai - 600 004 .. Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorari as stated therein.

For Petitioner : Mr. K. Venkataramani

For Respondents : Mr. M. Dhandapani
Additional Government Pleader

ORDER

The prayer in this Writ Petition is for a Writ of Certiorari calling for the records of the respondents in connection with the impugned order issued by the respondents 1 and 2 in C.No.F1/PR 13/2004 dated 17.06.2004 and Rc.No.150713/PR.I (1)/2004 dated 05.10.2004 respectively and quash the same.

2. When the Petitioner was working as Inspector of Police in Andhiyur Police Station between 18.11.1994 and 18.11.1996, on the basis of two complaints received against him during that period, preliminary enquiry was conducted by the respondents and thereafter charge memo dated 07.03.1997 was issued under Rule 3 (b) of Tamil Nadu Police Subordinate Service Rules (Discipline and Appeal) Rules, 1995 levelling four charges against the petitioner. The petitioner submitted his explanation denying the said charges. Thereafter, an enquiry officer was appointed 10.04.1997. The enquiry officer conducted enquiry in which 20 witnesses and 26 exhibits were marked by the prosecution. On consideration of the oral and documentary evidence, the enquiry officer found that all the four charges against the petitioner were not proved. Whereas, the disciplinary authority, the first respondent herein has taken a dissenting view

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only in respect of charge Nos. 1 and 2 are concerned and issued second show cause notice to the petitioner on 15.03.2004 for which the petitioner also submitted his reply on 02.04.2004 which was considered and final order was passed on 17.06.2004 imposing punishment of postponement of next increment of the petitioner for two years without cumulative effect. Aggrieved by the said order, the petitioner has preferred an appeal before the second respondent on 14.07.2004, which was also dismissed on 05.10.2004, hence, the present writ petition has been filed challenging the said two orders.

3. It is necessary to look into the charge Nos. 1 and 2 levelled against the petitioner, which runs as follows:-

> "1. Grave misconduct in having demanded and accepted Rs.1000/- from Tr. Krishnasamy @ Kittu (35) son of Sengottaiyan, Karumparaikadu, Perumpalayam Post, Nagalur Village of Anthiyur P.S. Limits, Erode District on 09.01.1995 at Anthiyur P.S. limit for not registering any case against him and to leave him free and thus exhibited lack of devotion to duty.
>
> 2. Grave misconduct in having demanded Rs.1000/- from one Devannan (50) S/o. Lourdusamy of Karumparaikadu, Perumpalayam Post, Nagalur Village on 14.01.1995 at Anthiyur P.S. for leaving without any case being booked against him accepted Rs.750/-on that date but registered a case under Prohibition Act against Thiru. Devannan on that date itself for paying Rs.750/- only as against the demand of Rs.1000/- and thus exhibited lack of devotion to duty."

4. Mr. Venkataramani, learned counsel for the petitioner submitted that in respect of charge Nos. 1 and 2, the prosecution has examined witnesses 1 to 11, 13 and 14. Charge No.1 was that witness No.1 Krishnasamy @ Kittu was taken into custody on 08.01.1995 by the petitioner and he was subsequently released on receipt of a sum of Rs.1,000/- without filing any case against him that the first witness himself stated that he was not taken into custody by the petitioner as alleged; that in so far as the averment that the petitioner has received a sum of Rs.1000/- from said the witness No.1 Krishnasamy @ Kittu is concerned, the same is also not proved by the prosecution, which is evident that witness No.2 Kuruvayee and witness No.3 Palanisamy in their evidence have not stated that the said payment was paid to the petitioner by witness No.1 Krishnasamy @ Kittu. It is further argued that in so far as the second charge is concerned, witness No.11 Jayamary and witness No.13 Anthonisamy have spoken that witness No.10 Devannan was taken to police station on 19.01.1995 by the petitioner and he was released on the same day; that witness No.17 Usman Ali, Sub-inspector of Police has deposed about the registration of the case against witness No.10 Devannan in Anthiyur Police Station Crime

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No.17 of 1995 under Section 4 (1) (a) of Tamil Nadu Prohibition Act on 14.01.1995 and he was released on the same day; that witness No.13 Anthonisamy has deposed that he has received Rs.750/- from his relatives and taken witness No.11 Jayamary to Anthiyur Police Station with the money to meet the demand of the petitioner for release of witness No.10 Devannan but there is no evidence that the said amount was paid to the petitioner. Summing up the above said evidence of the witness, the learned counsel for the petitioner submitted that both the charges against the petitioner were not proved. It is further submitted by the learned counsel for the petitioner that the respondents in their order stated that standard of proof required in a department enquiry is that of preponderance of probability and not proof beyond reasonable doubt as in the case of criminal trial in a court of Law, but in this case, the finding of the respondents is based on no evidence but perverse, hence, the same is liable to be set aside by invoking Article 226 of the Constitution of India; that the enquiry officer, based on the evidence found that the charges against the petitioner were not proved but the first respondent relied on the statements recorded in preliminary enquiry and came to an erroneous conclusion that charge Nos. 1 and 2 against the petitioner were proved without noting the fact that the said statements were made behind the back of the petitioner. In support of this contention, the learned counsel for the petitioner relied on the below mentioned decisions:-

i) (Central Bank of India Limited vs. Prakash Chand Jain) AIR 1969 Supreme Court 983 wherein in Para-8, it was held thus:-

> 8. ....It is true that, in numerous cases, it has been held that domestic tribunals, like an Enquiry Officer, are not bound by the technical rules about evidence contained in the Indian Evidence Act; but it has nowhere been laid down that even substantive rules, which would form part of principles of natural justice, also can be ignored by the domestic tribunals. The principle that a fact sought to be proved must be supported by statements made in the presence of the person against whom the enquiry is held and that statements made behind the back of the person charged are not to be treated as substantive evidence, is one of the basic principles which cannot be ignored on the mere ground that domestic tribunals are not bound by the technical rules of procedure contained in the Evidence Act...."

ii) (Kuldeep Singh vs. Commissioner of Police and others) (1999) 2 Supreme Court Cases 10 wherein in Para Nos. 33 and 34, it was held thus:-

> 33. In *State of Mysore* v. *Shivabasappa Shivappa Makapur* the witness was not examined in the presence of the delinquent so far as his examination-in-chief was concerned and it was his

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previous statement recorded at an earlier stage which was brought on record. That statement was put to the witness who acknowledged having made that statement. The witness was thereafter offered for cross-examination and it was held that although the statement (examination-in-chief) was not recorded in the presence of the delinquent, since the witness had been offered for cross-examination after he acknowledged having made the previous statement, the rules of natural justice were sufficiently complied with.

34. In *Kesoram Cotton Mills Ltd.* v. *Gangadhar* and *State of U.P.* v. *Om Prakash Gupta* the above principles were reiterated and it was laid down that if a previous statement of the witness was intended to be brought on record, it could be done provided the witness was offered for cross-examination by the delinquent."

5. Per contra, the learned Additional Government Pleader appearing for the respondents submitted that before commencing the enquiry, the first respondent has conducted preliminary enquiry, examined witnesses including witness Nos. 1 to 11, 13 and 14 and based on their statements, charges were framed, charge memo was issued to the petitioner and thereafter, an enquiry officer was appointed; that in the preliminary enquiry witnesses NO. 1 to 11, 13 and 14 have categorically stated that the petitioner herein has taken witness Nos. 1 and 10 to Anthiyur Police Station on 08.01.1995 and 14.01.1995 and after receipt of Rs.1,000/- and Rs.750/- respectively, they were released on bail; that the witness No.2 Kuruvayee and witness No.3 Palanisamy have categorically deposed about the receipt of Rs.1,000/- from witness No.7 Kaliamma and handed over the same to witness No.1 Krishnasamy @ Kittu, who in turn paid the amount to the petitioner, hence, the first charge against the petitioner was proved beyond reasonable doubt. It is further stated that in so far as the second charge is concerned, witness No.10 Devannan was taken to Anthiyur Police Station on 14.01.1995 and he was released on the same day after receipt of RS.750/- which is clear from the evidence of witnesses No.11 and 13; that witness No.11 Jayamary and witness No.13 Anthonisamy have deposed about the receipt of Rs.750/- from their relatives and witness No. 13 Anthonisamy went to Anthiyur Police Station and paid the amount to witness No.10 Devannan, who in turn paid the same to the petitioner, later, witness No.10 Devannan was released. The learned Additional Government Pleader further submitted that it is only a disciplinary proceedings and the authority need not look into the evidence in terms of Indian Evidence Act and preponderance of probability is sufficient to prove the charges against the petitioner, which was rightly established; that the disciplinary authority has imposed the punishment of postponement of petitioner's next increment for two years without cumulative effect, which was also rightly confirmed by the appellate authority and interference of this Court is not warranted.

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6. This Court carefully considered the argument of the learned counsel on both sides and perused the record. It is necessary to mention that to prove Charge Nos. 1 and 2 against the petitioner, the respondents have relied on the evidence of witness No. 1 to 11, 13 and 14, in which the evidence of witness Nos. 2, 3 and 7 are relevant to decide as to whether charge No.1 is proved or not. When we look into the evidence of witness Nos. 2 and 3, it is seen that they borrowed money from witness No.7 and thereafter they said to have handed over the same to witness No.1, who is the person made the complaint against the petitioner. It is seen from the evidence of witness Nos. 2, 3 and 7 that they did not see witness No.1 paying the money to the petitioner, besides, there is no oral or documentary evidence available to prove that the said amount was paid by witness No.1 to the petitioner. Witness No.1 also stated in his evidence that he was not even detained by the petitioner. The above discussion makes it clear that the amount of Rs.1,000/- said to have been demanded and received by the petitioner as well as the allegation that witness No.1 was illegally detained by the petitioner were not proved.

7. In so far as the second charge is concerned, the evidence of witness No. 10, 11 and 13 are to be considered. Witness No.13 Anthonisamy deposed that he collected Rs.750/- from his relatives and took witness No.11 Jayamary to Andhiyur Police Station with the money to secure the release of witness No.10 Devannan. It is to be remembered that on the complaint given by witness No.10 Devannan, the second charge has been framed against the petitioner. Except the said evidence of witness No.11 and 13, nothing has been whispered by them that the petitioner demanded and received the amount of Rs.750/-. Even witness No.10 Devannan has not spoken about the demand and receipt of Rs.750/- by the petitioner or detained on 14.01.1995, hence, the second charge levelled against the petitioner is also not proved.

8. It is seen from the records that a case in Crime No.17 of 1995 was filed under Section 4 (1) (a) of Tamil Nadu Prohibition Act against witness No.10 Devannan on 14.01.1995, of course, he was released on bail on the same day since admittedly the offence is a bailable one.

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9. As rightly pointed out by the learned counsel for the petitioner, the first respondent has relied on the statement of the witnesses recorded in the preliminary enquiry and came to the conclusion that the charge Nos. 1 and 2 against the petitioner were proved. It is well settled that any evidence recorded behind the back of the delinquent cannot be relied. The enquiry officer, based on the oral evidence, which was let in before him, including the statement recorded in the preliminary enquiry and the documentary evidence has came to the right conclusion that all the four charges levelled against the petitioner were not proved. Whereas, the first respondent just relied on the statements recorded in the preliminary enquiry and held that charge Nos. 1 and 2 were proved. As mentioned above, the said statements were recorded behind the back of the

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petitioner. The first respondent failed to consider the oral and documentary evidence recorded in the enquiry, but came to an erroneous conclusion that charge Nos. 1 and 2 were proved, which is not based on any valid evidence. The finding of the first respondent was also confirmed by the second respondent without considering it independently.

10. In view of the above discussion, the orders passed by both the respondents are liable to be quashed and accordingly they are quashed. The writ petition is allowed. No costs.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Commissioner of Police
   Coimbatore City

2. The Additional Director General
   of Police (L & W)
   Chennai - 600 004

1 cc to Government Pleader, SR.29138
1 cc to Mr.K.Venkataramani, Advocate, SR.29029

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